

Appn. Number 09/641,410 (Kiely) GAU 1794 Amendment B 8

Remarks – General

RECEIVED
CENTRAL FAX CENTER
MAY 16 2008

Specification:

Applicant has amended the specification to include the terminology, "a composite material," in response to the Examiner's rejection as being indefinite under § 112 (second paragraph). Basis for "a composite material," may be found in original claims 6, and 19, filed August 18, 2000, and in drawing sheet figures 15A, 27A-27E, 29, 30, 31, as well as "composite support" in the context of "ingredients of caramel, nougat," etc. [composite material support] throughout the specification.

Claims:

Examiner has presented a new reference in the final office action. Applicant has amended the claims to place the application in better form for allowance, according to the merits of the invention. The terminology "component" had been used previously in claim 331.

Election/Restriction

Regarding method claims 345- 348: Claims 345- 348 are not directed to a method of making "a supported frozen comestible," but directed to the non frozen support for a frozen comestible currently being examined. Applicant has the right to claim her invention with a method claim after the RCE, as the claims are new, and are directed to the same invention currently being examined. A method of making the support is documented in the specification. [0165] [0299] (see support 62 and "bar" throughout the specification) These claims should be examined.

Section 112 (first paragraph)

Regarding the means clause in claim 343: This claim has been remedied.

Section 112 (second paragraph)

The claims have been amended to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Appn. Number 09/641,410 (Kiely)

GAU 1794

Amendment B

9

Claims 319-327 are said to be unclear for the recitation of "wherein said two edible ingredient materials comprises an ingredient in a support."

Claims 319-327 have been clarified.

Claim 320 has been amended to recite, "a bite size ingredient."

Claim 321 is rejected as being indefinite as it is unclear as to what added limitation is being recited. Claim 321 has been remedied.

Claim 324 has been amended to recite, "said support."

Claim 327 has been amended to recite, "a single component, " as disclosed in the drawings and specification (bar/component, see clarification below).

Claims 327 and 336 are said to be indefinite for the recitation of composite material in the specification. The specification has been amended to eliminate the ambiguity, noted by Examiner. Proper basis is documented, as above. No new information has been added.

Double patenting:

The United States Patent and Trademark required the restriction of the divisional applications noted in the Office Action.

Clarification of the claims:

Applicant has amended the claims to place them in condition for allowance. Applicant has amended independent claim 332 to recite "a single component support" to more particularly point out and distinctly claim Applicant's invention. The *drawings* first and foremostly show the invention and the specification thereafter comment and teach referring to the drawings.

Applicant's drawings show two ingredient materials in a single component support, which is also discussed in the specification. Since "a single component support" is shown in the drawings and specification, applicant has remedied the claims as allowed. "An edible composite material" was claimed in claims 6 and 19 of the original application August 18, 2000. Claim 319 has been changed according to form to put the claims in better condition for allowance. Claims 327 and 328 have been amended to properly claim the invention reflected in the specification and

Appn. Number 09/641,410 (Kicly)

GAU 1794

Amendment B

10

drawings. Claim 336 has antecedent support in original claims 6 and 19 which recite: "wherein said support is "a composite material having a plurality of ingredients."

The terminology "single component" has clear and proper support in the original specification and drawings, describing and depicting an edible candy/cookie/granola "bar"(support component). Applicant has also shown support in the prosecution of Applicant's single component support comprising two ingredient materials prior to the RCE:

"Musher does not comprise, or attach two ingredient materials within the same component. Musher shows only components of the support, each of which is comprised of only one material, not two."

The specification also teaches of an edible bar component in a box for use at home as a support: [0361]. Specifics may be seen directly below, as describing Applicant's granola bar, (Kudos), as well as in additional portions of the specification, drawings and abstract.

[0161] Confection 84 is supported by an edible rectangular composite support 62, which has been inserted into confection 84. Stick 62 serves as a handle for the user.

Support 62 is made of a candy bar-like combination that has different ingredients.

[0167] "granola bar" Kudos [0168] [0172] "stick 62," [0219][0249][0256] claims 6, 6,19, 23 of 09/641,410.

[0164] "Preferably, support 62 is an elongated and slenderized, multi-ingredient, candy bar (made to a suitable size and shape to support the confection) such as those found at the check-out counter of a grocery store." i.e. "Single component support."

[0165] "One such candy bar has the ingredients of a whipped chocolate nougat center that is then coated with a thick chocolate coating, sold under the trademark Three Musketeers by Mars, Incorporated of Hackettstown, New Jersey. Another suitable candy "bar that contains" the ingredients of a whipped chocolate nougat center 90, topped with a thick layer of caramel 88, which is then totally dipped in a thick chocolate coating 86 (Fig. 27D), is one sold under the trademark Milky Way, also by Mars, Incorporated." i.e. "Single component support." [support 62]

[0361] "Separate components placed in a box at room temperature to construct a certain frozen confection provide easy-to-make and inexpensive kits. An appropriately

decorated and shaped container containing a cup of vacuum sealed pudding (individual size) and an elongated candy bar in the shape of a stick." N.B. i.e. "single component support."

Drawing sheet figures 15A, 27A-27E, 29, 30, 31, depict Applicant's single component support and a[n edible] composite material. Fig. 27E - support 62, i.e. original subject matter.

Applicant's Claims Recite Novel Features And Thus Distinguish Under § 102

Regarding Independent claim 319:

The Examiner writes: the edible support as taught by Feybusch comprises of distinct components, such as pastry cone ingredients (composite materials), molasses, popcorn, peanuts or puffed rice or nut brittle (composite material) and thus comprises of composite materials. Thus the support for a frozen comestible as taught by Feybusch, comprise edible composite material as instantly claimed.

Independent claim 319 recites, "A support for a frozen comestible comprising an edible composite material."

This limitation clearly distinguishes over Feybusch whose support does not comprise an edible composite material.

Claim 319 recites, "a composite material." As said for many years, this is a limitation of a single material. One material produced via a physical combination of at least two pre-existing ingredient materials.

Combining two materials together from "distinct" components, as Examiner suggests, to anticipate Applicant's claim 319, *shows at least two materials* from two "distinct components" (Examiner) and does not anticipate Applicant's one, or single material, "an edible composite material." All words in the claim must be considered to render a prima facie case of anticipation.

Appn. Number 09/641,410 (Kiely) GAU 1794 Amendment B 12

Examiner has spent an exorbitant amount of time circumventing the actual wording of Applicant's claim(s). Applicant has claimed a single material, *an* edible composite material, as of August 18, 2000. Combining the pastry cone ingredients and the molasses and the popcorn, or materials from distinct components, does not comprise a composite material. Also, peanut brittle is not an edible composite material (please see below). Examiner has admitted that the reference to Feybusch comprises materials from different components, not in a single component, or a single material, but a count of at least *four materials* of pastry, molasses, popcorn, peanuts or puffed rice or nut brittle from distinct components, and therefore is not "a composite material." (regarding 338 of OA)

Feybusch's material of pastry cone is a baked material, not a composite material (I take the usual pastry ice cream cone....") (pg. 1, col 2, lls. 59-60). Feybusch's material of molasses is a boiled material, not a composite material (pg. 1, col 2, lls. 60-65). Feybusch's material of peanut brittle is a boiled material, hardened into one solid mass, comprises *one ingredient material*, is not "produced via a physical combination of at least two "pre-existing" ingredient materials, and is not a composite material. Feybusch's material of popcorn is grown, does not comprise two pre-existing ingredient materials and is not a composite material. (pg. 1, col 2, lls. 66-70) Feybusch's material of nut or puffed rice is likewise not a composite material. Thus, Feybusch does NOT teach or comprise "an edible composite material" and does not anticipate Applicant's claim 319.

Peanut Brittle:

<http://video.about.com/candy/Peanut-Brittle.htm>

[http://www.reference.com/browse/wiki/Brittle_\(food\)](http://www.reference.com/browse/wiki/Brittle_(food))

Peanut brittle is not an edible composite material, but a boiled candy, which cools into a single hardened mass, and as completed is only one ingredient material.

Peanut brittle is a boiled candy made in a single pot (not two pre-existing ingredient materials.) Peanuts are mixed into hot melted liquid sugar, poured onto a flat surface and cooled and hardened to make the candy - i.e. one ingredient material. Peanut brittle does not comprise two

ingredient materials and is not a composite material:

http://mmc-assess.tuwien.ac.at/public/v1_glossary.pdf (*Applicant's IDS*)

Composite: A composite (or composite material) is defined as a material that consists of at least two constituents (distinct phases or combinations of phases) which are bonded together along the interface in the composite, each of which originates from a separate ingredient material which pre-exists the composite.

Peanut brittle is a candy version akin to the cookie cone of Selbak (US 5223286). Selbak puts chocolate chips in his cookie dough and then bakes the dough. As completed, his dough is a single ingredient material. Selbak's cookie dough cones do not comprise a composite material, but a baked material. A composite material comprises two ingredient materials each of which originates from a separate ingredient material which pre-exists the composite. Feybusch does not show an edible composite material.

Independent claim 319 recites, "A support for a frozen comestible comprising an edible composite material."

This limitation also clearly distinguishes over Musher whose support does not comprise a *non frozen* support for a frozen comestible, or a support comprising an edible composite material.

Musher (US 2,217,700) has invented a frozen confection. All parts of Musher's invention are frozen. Musher's support is frozen. Examiner suggests that Musher's support is not frozen before completion of the invention. Applicants are obliged to show how to make and use their invention. What a reference shows is the invention as made, not unfinished elements pulled out of context. Using unfinished elements and parts of elements against Applicant is unjustified. Musher does not show a non frozen support for a frozen comestible, but a frozen support.

Appn. Number 09/641,410 (Kiely) GAU 1794 Amendment B 14

In addition, Musher's stick material of edible baked or toasted product shows a baked material, not a composite material. (pg. 6, col. 1, lls. 43-47) Musher's chocolate coating, 15, 29, shows a boiled material and is not a composite material (pg. 6, col. 1, lls. 16-19). Musher's particle framework of figures 1, 2, and 4, shows a coated material, not an edible composite material. (Musher: "Referring to Figure 1, ...Each of the flakes 10 in this illustration is provided with a coating 11..." pg. 6, col. 1, lls. 4-19) A purely surface coated material cannot function in the same manner as an edible composite material, and is not an edible composite material. Enlargements 19 are a baked material, as taught by Musher (pg. 6, col. 1, lls. 43-50). His lattice framework 21 of figure 3 shows a baked material, not a composite material (pg. 6, col. 1, lls. 72-75). His lollipop 35 shows a boiled sugar candy, or a baked product, neither being a composite material. (pg. 6, col. 2, lls. 31-35). Thus, Musher also does not comprise an edible composite material. Combining materials from many distinct components shows at least two materials, not one material, as does Applicant and does not anticipate Applicant's claim 19.

Claim 320 recites: The support for a frozen comestible of claim 319 wherein said edible composite material comprises a bite size ingredient in said support.

This limitation clearly distinguishes over Feybusch, since Feybusch does not show an edible composite material and thus also does not comprise a bite size composite material ingredient. Musher does not show an edible composite material, as above, and thus also does not show a bite size edible composite material ingredient.

Claim 321 recites: The support for a frozen comestible of claim 320, further comprising two edible ingredient materials in said support.

This limitation clearly distinguishes over Feybusch and Musher, as neither Feybusch nor Musher show an edible composite material and therefore do not add two edible ingredient materials to a bite size composite material ingredient.

Appn. Number 09/641,410 (Kiely)GAU 1794Amendment B15

Claim 322 recites: The support for a frozen comestible of claim 320, further comprising an edible homogenous ingredient material in said support.

This limitation clearly distinguishes over Feybusch and Musher, as neither Feybusch nor Musher add an edible homogenous ingredient material to a bite size composite material ingredient, as neither comprise a[n edible] composite material to begin with. Feybusch adds a coating to a baked cone, not to a composite material, as does Applicant. Musher adds a coating to an edible baked or toasted product, or to an individual crisp flake, not to a composite material.

Claim 323 recites: The support for a frozen comestible of claim 320, further comprising a non edible material, wherein said non edible material comprises wood, plastic, or paper.

This limitation clearly distinguishes over Feybusch and Musher, as neither Feybusch's nor Musher add a non edible material to a bite size edible composite material in a support for a frozen comestible, as neither one shows an edible composite material to begin with, as above.

Claim 324 recites: The support for a frozen comestible of claim 319 wherein said edible composite material comprises said support.

This limitation clearly distinguishes over Feybusch and Musher. Feybusch does not show an edible composite material support, as he does not show an edible composite material, as above. Musher support also does not show an edible composite material support, as he does not show an edible composite material, as above. Combining *two* materials from many distinct components of cone, molasses, popcorn, nuts, as the Examiner suggests, comprises two or more materials and does not anticipate Applicant's single edible composite material, under § 102.

Appn. Number 09/641,410 (Kiely)

GAU 1794

Amendment B

16

Claim 325 recites: The support for a frozen comestible of claim 319 wherein said support comprises a handle.

This limitation clearly distinguishes over Feybusch and Musher. Feybusch and Musher do not show a handle comprising a composite material, as Feybusch comprises a pastry material, and Musher comprises a baked or toasted product. (claim 325). Any coating that may be added to the upper end of Musher's stick or the outside of Feybusch's cone is *an added second material* and does not anticipate "an edible composite material," a single material. Feybusch and Musher have taught of surface coatings only, which cannot function in the same manner as an edible composite material, and is not a composite material.

Claim 326 recites: The support for a frozen comestible of claim 319 wherein said edible composite material comprises two ingredient materials, wherein each of said two ingredient materials comprise a candy, a mini colored candy chip, a flavored candy chip, a mini size piece of candy, crushed candy, an individually coated piece of candy, a nut, ... peanut butter, nougat, dried yogurt, mint, ginger, graham, a filling, gelatin, ... or fruit.

This limitation also clearly distinguishes over Feybusch and Musher. Claim 326 is dependent upon claim 319 reciting a support that comprises an edible composite material. Feybusch and Musher do not show an edible composite material and the claim is thus not anticipated by the references. They each do not show an edible composite material comprising two ingredient materials, as above. They also each do not show ingredients such as peanut butter, nougat, dried yogurt, mint, ginger, graham, a filling, gelatin or fruit.

Claim 327 recites: The support for a frozen comestible of claim 326 wherein said two ingredient materials comprise a single component.

Appn. Number 09/641,410 (Kiely)GAU 1794Amendment B17

This limitation clearly distinguishes over Feybusch and Musher, as neither Feybusch, nor Musher show a support with two ingredient materials in a single component. Feybusch's single component of usual pastry cone comprises only a single ingredient material of baked cone. Musher's single component of baked/toasted product comprises only a single ingredient material of baked stick.

Claim 328 recites: The support for a frozen comestible of claim 319 wherein said support comprises a single component.

This limitation clearly distinguishes over Feybusch and Musher, as neither Feybusch, nor Musher show a single component support. *As completed*, Feybusch shows a support having many components including a cone, a liquid coating, and popcorn, nuts, etc.. Musher also shows a support having many components of either a multi-component framework support without a stick, (not shown) or a support having a baked stick, a coating, and a framework.

Claim 329 recites: The support for a frozen comestible of claim 326, further comprising a plurality of ingredients in said support comprising candy, mini colored chips, ...thereof."

This limitation clearly distinguishes over Feybusch and Musher, as neither Feybusch, nor Musher add a plurality of ingredients to a support that already comprises an edible composite material.

Claim 330 recites: The support for a frozen comestible of claim 319, further comprising a supported frozen comestible.

This limitation clearly distinguishes over Feybusch and Musher, as neither Feybusch, nor Musher teach of supporting a frozen comestible with a support that comprises an edible composite material.

Claim 331 recites: The support for a frozen comestible of claim 319, further comprising an edible component, wherein said edible component comprises a lollipop, a mess guard, or a drip guard, said edible component further comprises two edible ingredient materials.

This limitation clearly distinguishes over Feybusch and Musher. Musher adds a lollipop to a surface coated baked stick, i.e. two materials, not to a support comprising an edible composite material, i.e. one material. Feybusch may add a messguard of popcorn to a surface coated baked cone, i.e. two materials, not to a support comprising an edible composite material, i.e. one material.

Independent claim 332 recites, "A single component support for a frozen comestible comprising two ingredient materials."

This limitation clearly distinguishes over Feybusch and Musher, as Feybusch's support, as completed, comprises many components of a cone, a liquid coating, and a particle coating of popcorn, nuts, etc.. Musher's support, as completed, also comprises many components comprising either a multi-component framework support without a stick, or a support having a baked stick, a coating, and a framework.

Claim 333 recites: The single component support for a frozen comestible of claim 332, wherein said two edible ingredient materials comprise a bite size ingredient, a support, a handle, or combinations thereof.

This limitation clearly distinguishes over Feybusch and Musher. Neither Feybusch nor Musher teach of a single component support for supporting a frozen comestible. As completed, they both teach of multi-component edible supports. In addition, they also do not show a single component support comprising a bite size ingredient which also has two ingredient materials, or a single component support having two ingredient materials, a single component handle comprising two ingredient materials, or combinations thereof.

Appn. Number 09/641,410 (Kiely)GAU 1794Amendment B19

Claim 334 recites: The single component support for a frozen comestible of claim 332 wherein each of said two ingredient materials comprise a candy, a mini colored candy chip, a flavored candy chip, a mini size piece of candy, crushed candy, ...fruit.

This limitation clearly distinguishes over Feybusch and Musher. Neither reference shows a single component support comprising two ingredient materials of candy, a mini colored candy chip, a flavored candy chip, a mini size piece of candy, crushed candy, ... or fruit.

Claim 335 recites: The single component support for a frozen comestible of claim 332, further comprising a plurality of ingredients in said support comprising candy, mini colored chips, flavored chips, mini size.... or combinations thereof.

This limitation clearly distinguishes over Feybusch and Musher, as Feybusch and Musher neither teach of adding ingredients to a single component support that already comprises two ingredient materials, since they each teach of having only a multi-component support, where their supports relying on § 102 for novelty, and relying on their inventions as a whole, require these many parts.

Claim 336 recites: The single component support for a frozen comestible of claim 332 wherein said two ingredient materials further comprise an edible composite material.

This limitation clearly distinguishes over Feybusch and Musher, as Feybusch and Musher do not teach of a single component support only multi-component supports. They also do not teach of a support comprising an edible composite material in a single component, as they teach of only raw ingredients in their baked pastry cone, or baked or toasted product.

Claim 337 recites: The single component support for a frozen comestible of claim 332, further comprising a supported frozen comestible.

Appr. Number 09/641,410 (Kiely)

GAU 1794

Amendment B

20

This limitation also clearly distinguishes over the references to Feybusch and Musher, since they each teach of supporting ice cream on a multi-component support. They do not teach of using a single component support comprising two ingredient materials to support a frozen comestible.

Independent claim 338 recites: A support for a frozen comestible comprising an edible composite material, wherein said edible composite material comprises a bite size ingredient, a support, a handle, or combinations thereof.

This limitation distinguishes over Feybusch, as Feybusch's teaches of cone that is a baked material, i.e. not a composite material, molasses or the like, a boiled material, i.e. not a composite material, popcorn, not a composite material, nut, not a composite material or puffed rice, i.e. not a composite material. Musher likewise teaches of baked stick material, boiled coating material, or a framework comprising a coated material. Feybusch and Musher never teach or suggest using an edible composite material in their supports in any capacity.

Claim 339 recites: The support for a frozen comestible of claim 338 wherein said support comprises a single component support.

This limitation clearly distinguishes over the references to Feybusch and Musher as they both teach of using only a multi-component support to support a frozen comestible. Furthermore, neither Feybusch and Musher ever suggest incorporating an edible composite material in their respective supports.

Claim 340 recites: The support for a frozen comestible of claim 338 wherein said edible composite material comprises two ingredient materials, wherein each of said two ingredient materials comprise a candy, a mini colored candy chip...dried yogurt, mint, ginger, graham... or fruit.

Appn. Number 09/641,410 (Kiely) GAU 1794 Amendment B 21

This limitation clearly distinguishes over the references to Feybusch and Musher who do not comprise an edible composite material in their respective supports, much less an edible composite material comprising dried yogurt, mint, ginger, graham, or fruit.

Claim 341 recites: The support for a frozen comestible of claim 338 further comprising a plurality of ingredients in said support comprising candy, ... a fluid ingredient, chewing gum,... a cookie,... a potato stick, a pretzel,... peanut butter,... yogurt, mint, ginger, graham, a filling, gelatin, fruit,... an edible bite sized composite material, or combinations thereof.

This limitation clearly distinguishes over the references to Feybusch and Musher, since they do not show an edible composite material that further comprises ingredients such as a fluid ingredient, chewing gum, a cookie, ... a potato stick, a pretzel, ... peanut butter,... yogurt, mint, ginger, graham, an edible bite sized composite material, or many other ingredients.

Claim 342 recites: The support for a frozen comestible of claim 338, further comprising a supported frozen comestible.

This limitation clearly distinguishes over the references to Feybusch and Musher, who have never suggested using an edible composite material in their support, either by way of a bite size ingredient, a support, or a handle for the purpose of supporting a frozen comestible.

Independent claim 343 recites a means clause for the above application, which Feybusch and Musher have not anticipated, under § 102, as above. Claim 344 is dependent upon claim 343 and should be allowed.

Independent claim 345 recites a method claim. This claim and the respective dependent claims are also respectfully submitted to be patentable over the reference to Feybusch, and Musher and

Appn. Number 09/641,410 (Kiely)

GAU 1794

Amendment B

22

over all the known references and should be allowed.

Response to arguments:

I) Regarding providing support in the original disclosure of the present application: Applicant has shown the support comprising "an edible composite material" in the drawings. The drawings first and foremostly show the invention and the specification comments and teaches referring to the drawings. The drawings also show two ingredient materials in a single component support, which is also discussed in the specification. Since "an edible composite material" is shown in the drawings and in the original claims of the above application, Applicant has remedied the specification to recite "an edible composite material," as allowed. "An edible composite material" was claimed in claims 6 and 19 of the original application August 18, 2000. (Please see clarification of claims, above, for specific support paragraphs in the specification and drawings.)

II) a) regarding Examiner's quote in the Office Action of Applicant: "Musher's composite support structure is made up of plurality of edible ...components"

This is a quote that Examiner put together. Applicant had not said these quoted words.

Regarding, "each of the framework structures are bonded together to make the framework structure"

This is another misquote by Examiner's of Applicant. Applicant had not said these quoted words.

The patent to Musher outrightly teaches that the ready to eat cereals are bound together into a durable structure. (Musher: Page 1, col. 1, lls. 43-46)

II) b) The Examiner states: "further the applicant alleges that components, such as, baked dough constitute a single material and do not qualify as a two ingredient material. In response the applicant is *reminded that material*, such as, baked dough, also comprises of ingredients

Appn. Number 09/641,410 (Kiely)

GAU 1794

Amendment B

23

including flour, water, salt or sugar or fats or oils and other flavors or additives, thus applicant's *argument that none of the components in Musher's support structure are two ingredient materials is unsubstantiated and not persuasive.*"

Examiner has again misquoted Applicant. Applicant had *not* said that "baked dough constitute a single material and do not qualify as a two ingredient material," but "The baked stick of Musher also *comprises only a single material*, baked dough, not two ingredient materials."

Consequently, if Examiner thinks that each raw ingredient is indicative of an ingredient material, i.e. "unsubstantiated and not persuasive," one is lead to think that Examiner does not understand the meaning of the publicly known and accepted terminology "ingredient material." Misquoting Applicant and basing a rejection on this information (unfinished patents) is truly unjustified. The Examiner is unjustified misquoting and rejecting Applicant's claims for years, i.e. since August of 2000, which contained patentable subject matter.

As stated in previous responses to Office Actions, **an ingredient material: Raw materials put together to produce the composite** (e.g., the metal alloy, metal powder, ceramic particles, etc.) During the processing the ingredient materials are transformed into the constituents of the MMC (metal matrix composite).

Again, Examiner is pulling apart the reference before it is made and using it against Applicant. This is unjustified. Adding raw ingredients together just adds more ingredients to raw ingredients already there and can be said of adding them to the ice cream itself, toppings, sprinkled coatings, everything. Even ingredients are made of other elements. This argument invalidates even the patent of Musher. Every edible patent issued by the United Patent and Trademark Office, and all other eaten substances for a millennium, can be pulled apart and invalidated, as everything eaten is made of elements and ingredients. Every patent that puts together two ingredients can be invalidated. As completed, what the patent to Musher shows is a baked or toasted product. Musher's baked stick constitutes one ingredient material. A composite material is produced via a

physical combination of at least two pre-existing ingredient materials (Tuwien -IDS). As above, on page 14, NONE of Musher's materials comprise an edible composite material. Musher also does not show a single component support that comprises two ingredient materials. Pulling apart unfinished patents and using them to reject Applicant, as Examiner(s) has done for years is unjustified.

III) c) The Examiner states: Regarding the argument that "Musher's support must be crisp, page 12, has been considered, however, it is noted that the features upon which applicant relies (i.e. Musher's support must be crisp)" are not relevant to the instantly claimed invention as it is not a limitation that is required as recited in the rejected claims(s).

Applicant's remarks had read: (page 12 paragraph 2) "Furthermore, Musher cannot make Applicant's support. All of Musher's framework structure must be pieces. All of the pieces must be crisp. All of the crisp pieces must be coated, all of the coated pieces must be mixed. All of the mixed pieces must have intercommunicating recesses. Musher's stick must also be crisp. Musher does not show Applicant's support that comprises two ingredient materials that may be non coated, soft, full size, or a solid material support comprising two ingredient materials. Non coated *soft ingredient materials*, such as a whipped nougat, may be used with another soft ingredient material, such as peanut butter. Musher's food pieces must be hard and crispy. As above, Applicant's "two ingredient materials" need not be in pieces, such as flakes, or ribbons, but may be whole, such as a full length of chocolate, or an entire cookie."

Applicant's *not crisp* ingredient materials of "whipped nougat, peanut butter" ARE limitations in the claims, ARE relevant to the instantly claimed invention, and ARE recited in the rejected claim(s). See nougat, peanut butter, in claims 326, 329, 334, 335, 340, and 341.

Since Examiner's remarks are largely misquoted and unjustified, as evidenced above, Applicant will not address them further.

Examiner has failed to show a case of anticipation under 35 U.S.C. § 102. Applicant respectfully submits that independent claims 319, 322, 338, 343, and 345 and hence all claims, clearly recite novel subject matter over each reference, and over all known references, and thus should be

RECEIVED
CENTRAL FAX CENTER

MAY 16 2008

25

Appn. Number 09/641,410 (Kiely)

GAU 1794

Amendment B

allowed.

Conclusion

For all of the above reasons, Applicant submits that the claims define novel structure under §102, which novel structure is unobvious and thus patentable under §103. Accordingly Applicant respectfully requests reconsideration and allowance of the claims.

Conditional Request For Constructive Assistance

Applicant submits that she has a novel and unobvious invention. She has made a diligent effort to amend the claims of this application so that they recite novel features of her invention, which she submits are unobvious. If, for any reason, the Examiner believes that the claims of this application are not yet in full condition for allowance, Applicant respectfully requests the Examiner's constructive assistance and suggestions pursuant to the spirit of MPEP §706.03(d) and §707.07(j). This will enable the undersigned to place this application in fully allowable condition as soon as possible and without the need for further proceedings.

Very Respectfully,


Alice O. Kiely

71 Stonewall Court
Yorktown Heights, NY 10598
Tel. (914) 245-6661

Certificate of Facsimile: I certify that on the date below, this document and referenced

Appn. Number 09/641,410 (Kiely)

GAU 1794

Amendment B

26

attachments, if any, will be faxed to the central fax number of 571-273-8300 to the United States Patent and Trademark Office "Commissioner for Patents" Arlington, Virginia 22313.

2008 May 16,


Alice O. Kiely